

FORTE -- Appln. No. 09/374,117

II. REMARKS

Preliminary Remarks

Claims 26-29 and 32 remain pending in this application and have not been amended in the present response.

This response is timely filed as the deadline for taking action (no fee due) fell on Monday, May 12, 2003. The applicant understands that because this application is under final rejection, entry of this response is at the discretion of the examiner. However, the applicant respectfully submits that this response does not raise any new issues, does not enter any new claims, and is necessary but was not earlier presented because it is in response, at least in part, to the examiner's comments in the February 12 official action. Accordingly, the applicant respectfully requests that this response be entered and considered.

Patentability Remarks

In Paragraph 2 of the official action, the examiner maintained the rejection of claims 26-29 and 32 under 35 U.S.C. § 102(e) as allegedly being anticipated by McCormack et al., U.S. Patent No. 6,075,179 (hereinafter the '179 patent). The applicant respectfully traverses.

The examiner's position on the '179 patent is set forth in Paragraph 6 of the official action, which states, in part, that:

Although McCormack does not specifically label their core layer as an "adhesive", the core layer of McCormack is co-extruded with a first skin and a second skin so that the first skin is attached to a first exterior surface of the core layer and the second skin is attached to a second exterior surface of the core layer. Because the first and second skin layers are "attached" to the core layer, the core layer of McCormack expressly reads on Applicant's "adhesive core layer." (Official action at Paragraph 6, lines 3-8)

The applicant respectfully submits that the examiner has misconstrued the disclosures of the '179 patent. Moreover, the applicant submits that the examiner's position is directly contradicted by the disclosures of the '179 patent. Contrary to the examiner's position, the '179 patent consistently discloses that it is the outer layers, not the core layer, that are adhesive. For example, in the paragraph extending from line 33 to line 40 of column 4, the '179 patent states:

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Oftentimes it may be desirable to laminate the multilayer film 10 to one or more substrates or support layers 30 such as is shown in FIG. 2. The core layer may not have sufficient adhesive or attachment properties so as to make it bondable to the support layer 30. As a result, the first skin layer 18 may be made from a polymer or polymers which exhibit higher adhesive properties and/or a lower tack point than the core layer 12.

Moreover, at column 5, lines 17 to 20, the '179 patent affirms that it "may be desirable to design either or both the first skin layer 18 and the second skin layer 20 so as to have inherent adhesive properties to facilitate the lamination process."

Furthermore, in Paragraph 6 of the official action, the examiner appears to be asserting that because the layers disclosed in the '179 patent are "attached," the core layer of the '179 patent must be adhesive. Stated otherwise, the examiner appears to be arbitrarily assigning the feature of "adhesiveness" to the core layer. The applicant disagrees with the examiner's assertion, both generally and in view of the disclosure in the '179 patent that its core layer is not adhesive.

With respect to the examiner's assertion that the co-extruded films disclosed in the '179 patent read on the "adhesive core layer" of claims 26-29 and 32, the applicant notes that a film may be "adhesive" in the context that the examiner appears to be suggesting only if it will bond when at extrusion temperatures. However, the applicant submits that the examples of the '179 patent show core layer compositions having a minority of polymer ingredients. This is compared to the outer skin layers of the '179 patent, which contain a majority of copolymers, *i.e.*, would be adhesive.

As the applicant has previously pointed out, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Given that the '179 patent does not disclose "an adhesive core layer" as recited by claims 26-29 and 32, the applicant submits that the '179 patent cannot anticipate those claims, in that "each and every element as set forth in the claim" is not described in the cited patent. Accordingly, the applicant respectfully requests that the rejection be withdrawn.

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III. CONCLUSION

The applicant respectfully submits that the claims are now in a condition for allowance and requests that such action be undertaken. Should the examiner wish to discuss this matter or any other matter related to the present application, the examiner is strongly urged to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

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